IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.133 OF 2007

IN

SPECIAL CIVIL SUIT NO.225 OF 2005

WITH

CIVIL APPLICATION NO.198 OF 2007

M/s.Haware Engineers & Builders
Pvt.Ltd. ...Appellants

Versus

Shri Vithabai Yeshwant Purnekar
& Ors. ...Respondents

.....

Mr.A.K.Abhyankar i/b M.Tripathi & Co. for Appellants.

Mr.P.K.Dhakephalkar with Mr.Jaydeep S.Deo for Respondent No.4.

.....

CORAM: A.M.KHANWILKAR, J.

FEBRUARY 28, 2007.

P.C.

1. Heard Counsel for the parties.

2. According to the Appellants, only reason

which has weighed with the Trial Court for rejecting the prayer for interim relief is that the transaction in favour of Defendant No.4 was in earlier point of time. It is contended that the transaction in favour of the Plaintiffs was in terms of the Agreement executed on 4th August 2004, whereas, the document executed in favour of Defendant No.4 is of 19th April 2005. The Trial Court, however, has adverted to communication which is in the nature of offer letter dated 1st July 2004 and on that basis has assumed that the transaction in favour of Defendant No.4 was in earlier point of time. According to the Appellants, therefore, the order in question cannot be sustained. This argument though attractive, overlooks the other reason which has weighed with the Trial Court.

3. I am in agreement with the submission made by the Counsel for the Respondent No.4 that the Trial Court in Paras 10 and 11 has adverted to the contention of the Respondents that the property in question is an ancestral property and the co-owners have undivided shares therein. The document on

which the Plaintiffs would rely is purportedly executed only by Defendants 1, 2 and 3 and not by other co-owners. It is not the case of the Plaintiffs that Defendant Nos.1 to 3 had authority to transact on behalf of other co-owners. Whereas, the document in favour of Defendant No.4 dated 19th April 2005 is executed by all the co-owners. In other words, the Plaintiffs cannot assert right in respect of the entire suit property. Besides, the other co-owners have not been made party to the Suit nor any appropriate relief is claimed against the other co-owners.

4. I also find force in the argument of the Counsel for the Respondent No.4 that the Defendant No.4 claims to have acquired right in respect of the suit property through Mr.Kamlakar Patil in whose favour the co-owners had executed Development Agreement. No relief is claimed against the said Mr.Kamlakar Patil or other co-owners by the Plaintiffs. In such a situation, the question of Plaintiffs' succeeding in grant of interim relief as prayed, does not arise. Hence dismissed.

5. At this stage, Counsel for the Appellants prays that the order of status-quo which is operating in favour of the Appellants be continued for some time to enable the Appellants to take up the matter in Appeal and/or to amend the Plaint and seek for appropriate reliefs as may be advised.

6. As the order of status-quo has continued in favour of the Appellants for some time, in the interest of justice, same arrangement be maintained by the parties for a period of three weeks from today. Ordered accordingly.

7. In view of the above order, companion Civil Application stands disposed of.

A.M.KHANWILKAR, J.